

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ELAINE M. COLEY,

Plaintiff,

V.

CASE NO: 2:06cv378-WKW

ALABAMA MEDICAID AGENCY,

Defendant.

MOTION TO COMPEL

COMES NOW Defendant ALABAMA MEDICAID AGENCY (the “Defendant”) by and through its undersigned counsel, and respectfully requests that this Court enter an Order compelling Plaintiff to respond to the Agency’s Interrogatories and Requests for Production of Documents to Plaintiff and to submit to a deposition after responding to said discovery requests. As grounds therefore, the Defendant shows unto the Court the following:

1. This Court entered an Order on September 6, 2006, setting forth the deadlines for discovery.
2. On September 29, 2006, the Plaintiff requested additional time to conduct discovery and to retain an attorney.
3. On October 11, 2006, this Court entered an Order allowing additional time for Plaintiff to obtain counsel and for the parties to conduct discovery.
4. On October 11, 2006 Defendant served upon the Plaintiff and filed with the Court (1) Interrogatories and Requests for Production of Documents, (2) Requests for Admission and (3) a Deposition Notice for Plaintiff's deposition. (See Defendant's Interrogatories and Requests

for Production of Documents to Plaintiff, Requests for Admission and Deposition Notice, attached hereto as Exhibit "A").

5. Counsel for Defendant has corresponded with Plaintiff on numerous occasions regarding the discovery and the Deposition Notice. (See letters dated October 11, 2006 (without attachments), November 14, 2006, November 17, 2006, November 20, 2006 and November 27, 2006, attached hereto as Exhibits "B", "C," "D" "E" and "F").

6. On November 25, 2006 Plaintiff sent an e-mail to counsel for the Defendant that contained her "Response to Defendant's Interrogatories and Request for Production." See e-mail at Exhibit "G". The e-mail did not contain an executed copy of the Interrogatory responses and in response to the Production request, the Plaintiff stated: "Documents for production that apply are in possession of the defendants."

7. Plaintiff contacted counsel for Defendant by phone on November 27, 2006 to confirm receipt of the e-mail. Counsel for the Defendant told Plaintiff that her production response was not sufficient and that the production response was needed to allow the Defendant to prepare for the deposition. Counsel for the Defendant also confirmed the date and time of the deposition and gave Plaintiff directions to the location of the deposition. Plaintiff indicated that the Defendant should have all of the information she would rely on.

8. Counsel for the Defendant attempted to reach Plaintiff again by telephone a few minutes later to advise her that she must provide documents responsive to the production request to avoid counsel filing a motion to compel, but Plaintiff advised counsel that she did not have time to talk. Counsel asked Plaintiff to call her back, but counsel has received no further communication from Plaintiff.

9. Counsel for the Defendant sent another letter on November 27, 2006 after the phone call advising that a motion to compel would be filed if Plaintiff did not respond to the production request by 5:00 p.m. on November 29, 2006. See Exhibit "F."

10. On November 29, 2006, Plaintiff filed with the Court her "Response to Defendant's Interrogatories and Request for Production" which like the version e-mailed to counsel for the Defendant, states "Documents for production that apply are in possession of the defendants."

11. Defendant has no way of knowing which documents Plaintiff is referring to in her production response. Plaintiff should be required to properly respond to the production request and provide a properly executed copy of her Interrogatory responses, in compliance with Rules 33 and 34, FED. R. CIV. P.

12. Plaintiff's deposition has been scheduled for December 1, 2006 since October 11, 2006. Without the production response, Defendant cannot adequately prepare for the deposition. The Plaintiff is aware that her deposition was scheduled after the discovery responses were due so that Defendant could properly prepare for the deposition. On this date, Defendant has no choice but to postpone Plaintiff's deposition and seek the Court's assistance in obtaining the Plaintiff's discovery responses and requiring the Plaintiff to submit to a deposition within a reasonable time thereafter. See Exhibit "H," Letter to Plaintiff forwarding Motion to Compel and advising that deposition has been postponed (without attachments).

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that this Court will enter an order compelling the Plaintiff to provide discovery responses due the Defendant in accordance with Rules 33 and 34, FED. R. CIV. P. and this Court's Scheduling Order. Defendant further requests that this Court will order the Plaintiff to appear for a

deposition within 14 days of this Court's deadline for the Plaintiff to serve complete discovery responses.

Dated: November 30, 2006.

s/Amanda C. Carter

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CERTIFICATE OF SERVICE

I do hereby certify that on this the 30th day of November, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and that I mailed a copy of the foregoing to the Plaintiff, properly addressed and first class postage prepaid.

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